Supreme Court, U.S.
FILED

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No.

In the
SUPREME COURT OF THE UNITED STATES

October Term 1997

Roy F. Sutton, Petitioner

v.

George L. Seltzer, Esquire; Alten Valentine & Seltzer,
Respondents.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Roy F. Sutton
Petitioner
210 E. Upland Ave.
Galloway Twp., N.J.
08201
609 652 8313

26 pp

QUESTIONS PRESENTED

I. Whether New Jersey Appellate Rules, silent as to amending a filed Notice of Appeal, so as to allow for inclusion of post-filed lower orders are void for vagueness?

II. Whether relaxation of non-relaxable Ten Day Rule (4:49-2), so as to allow respondent attorney fees, is a denial of equal protection for petitioner, under the Fourteenth Amendment?

III. Whether the Fourteenth Amendment precludes Frivolous Litigation sanctions (N.J.S.A. 2A:15-59.1) for an Entire Controversy complaint dismissal (Rule 4:30A)?

TABLE OF CONTENTS

Table of Authorities.....i

Opinions Below.....1

Jurisdiction.....1

Statutory Provisions involved.....1

Statement of the Case.....1

Reasons For Granting The Writ

I. State court actions, in concert with private parties; are broadly unconstitutional, inherently wrongful.....6

II. The issues, questions are of significant public importance.....9

Appendix A.....1a
Order denyhing vacate motion
Appendix B.....2a
Order denying reconsideration
Appendix C.....3a
Affirmance ruling
Appendix D.....5a
Certification denial
Appendix E.....6a
Statutory provisions Involved

TABLE OF AUTHORITIES

`Alcman Serv. Corp. v Bullock
925 F.Supp. 252 (DCNJ 1996) *affirmed*.....8
Barr v City of Columbia
378 U.S. 547 (1964).....7
Beard v State
176 Ind App 348, 375 NE2d 270 (1978).....7
Chambers v Nasco
501 U.S. 32 (1991).....9
Crawford-El v Britton
U.S. Supreme Court ,96-827.....6
Darr v Buford, Warden
339 U.S. 200 (1949).....9
Giaccio v State of Pa.
382 U.S. 399 (1966).....7
Hamilton Amusement Ctr. v Poritz
298 N.J. Super 230 (App Div 1997).....4
Huffman v Pursue
420 U.S. 592 (1975).....9
James v Francesco
61 N.J. 480 (1972).....4
Judice v Vail
430 U.S. 327 (1977).....9
Lassiter v Department of Soc. Serv. of Durham City
452 U.S. 18 (1981).....9
Leon v Johns-Manville Corp.
717 F. Supp 272 (DCNJ 1989).....4,7
Matthews v City of Atlantic City
84 N.J. 153 (1980).....5
McColloch v Maryland
17 U.S. 314 (1819).....7
Meeker v Meeker
52 N.J. 59 (1968).....5
Olds v Donnelly
150 N.J. 424 (1997).....9
Right to Choose v Byrne
91 N.J. 287 (1982).....5
Rivkin v Dover Tp. Rent Leveling Bd.
142 N.J. 352 (1996).....5,6

State v Lashinsky
81 N.J. 1 (1979).....4
State v P.Z.
152 N.J. 56 (1997).....5
Stump v Sparkman
435 U.S. 349 (1978).....7
Twp of Montvalle
74 N.J. 1 (1977).....5

United States

Fourteenth Amendment.....4

18 U.S.C.A. 242.....6

42 U.S.C.A. 1983.....6

F.R.C.P. 11.....8

F.R.C.P. 19.....9

F.R.C.P. 59(e).....8,9

New Jersey

Article 6, Section II, Par 2.....3,7

Article 6, Section II, Par 3.....3,7

Article 6, Section V, Par 3.....3,7

N.J.S.A. 2A:15-59.1.....2,8,9

Rule 2:2-1(a).....3

2:6-2.....3,4

2:9-1(a).....4

2:10-5.....2

Rule 4:30A.....1,8,9

4:42-9(d).....8

4:49-2.....2

4:50-1.....2

Indiana

Appellate Rule 3A.....7

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

Roy F. Sutton respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of New Jersey entered in this matter.

OPINIONS BELOW

The unreported ruling of the Superior Court of New Jersey , Law Division Gloucester County, denying motion to vacate and dated 7 Feb 1997 is within Appendix at 1a. The unreported , related motion for reconsideration dated 7 March 1997 is set forth in Appendix at 2a. The unreported affirming order of Appellate Division , dated Jan 13, 1998, is within Appendix at 3a. The unreported denial of petition to Supreme Court of New Jersey and dated March 24, 1998 (filed March 25, 1998) is set forth in Appendix at 5a.

JURISDICTION

Then New Jersey Sujpreme Court denied discretionary review on March 25, 1998 (App 5a). The jurisdiction of this Court is predicated upon title 28 U.S.C.A. 1257.

STATUTORY PROVISIONS INVOLVED

Amendment XIV, Section 1; 18 U. S. C. A. 242; 42 U.S. C. A. 1983; New Jersey Constitution Article VI Section II, Part 2; Article VI Section 2, Part 3; Article VI Section III, Part 2; Article VI Section V, Part 3; New Jersey Statute 2A:15-59.1; New Jersey Court Rules 2:2-1; 2:6-2; 2:9-1(a); 2:10-5; 4:40A; 4:42-9(d); 4:49-2 ; 4:50-1 and Ind. App. Rule 3(a) are set forth in their entirety within Appendix 6a—9a

STATEMENT OF THE CASE

Present circumstances , also related to concurrently filed Petition for Certiorari , Sutton v the Estate of Sutton ; followed an Entire Controversy dismissal (Rule 4:30A) of a legal malpractice cause of action agasinst respondents. Suit was transferred to Gloucester County Superior Court owing to an apparent conflict of interest ,as Attorney Seltzer has been sitting Bench in Atlantic County.

Upon complaint dismissal, petitioner filed timely Notice of Appeal. Thereafter and long after the expiration of the non-relaxable Ten Day Rule (R 4:49-2), respondent's attorney filed for, and was granted $6013.00 in sanctions under New Jersey's Frivolous Litigation Statute (2A:15-59.1). Initial opposition, based upon lack of jurisdiction and upon inapplicabilty of sanctions for an Entire Controversy dismissal, was denied by the Gloucester County Superior Court. The award order cited no legal authority for the grant of sanctions. Petitioner took, no further action , respecting the sanction award, as said judgment was void under New Jersey law , essentially a legal nullity and unenforceable; notwithstanding and eventually, affirmance ruling did cite legal malpractice.

A few weeks after dismissal affirmance, respondent turned the award into a property lien , through court action; and without notice to petitioner. Upon notice of an existing court judgment lien, gained through a title search for a pending sale (concurrently filed petition , Sutton v. the Estate of Sutton, et al), petitioner moved to vacate said lien , again based upon voidness and upon inapplicability of an Entire Controversy dismissal. Said motion was denied on 7 Feb. 1997 as was reconsideration on 7 March 1997 (App 1a & 2a). Parenthetically , neither lower order, again, cited any legal authority for their rulings.

Refusal to vacate said lien judgment was affirmed on January 13, 1998 (App 3a & 4a). Petitioners' arguments, points were ignored and although the Appellate Panel did indicate that it "carefully reviewed the record , in light of applicable law" the only two cases cited actually supported petitioner's position; as argued to the New Jersey Supreme Court (Petition for Certification, at page 9).

Panel went further to Sua sponte indicate that petitioner should have amended Notice of Appeal to include the fee award; yet, cited no authority, precedent for their position (App 3a). Neither side had ever previously raised , argued this point either to the Panel or to the Lower Courts. Significance ,herein ,is an exercise of original jurisdiction by the Panel under Rule 2:10-5 (App 8a). While Panel did further cite basis for petitioner's appeal under Rule 4:50-1; they did ignore a recent reversal of the basis for dismissal of the original malpractice suit, as was properly and timely presented to them by way of supplemental Letter Brief which should have commuted to Rule 4:50-1(e) relief. (App 9a)(and as also indicated in State Cert Petition, at page 8)

Petitioner cited six reasons for granting certification (Petition for Certification ,pp 5--8) ; yet, all were ignored with denial on March 24, 1998 (App5a); and thus under New Jersey Law, concluding any further causes of action , remedies----unlike a U.S. Supreme Court denial which carries no significance, implications upon discretionary review denial.

How the federal claims were presented, asserted: As previously indicated within companion petition (pp 2--6), filed concurrently; New Jersey takes a liberal , relaxable approach to presenting claims, positions, and arguments in Its court system., under Constitution and under Court Rules: Article VI, Section II, Part 2 (App 6a); Article VI, Section II, Part 2 (App 7a); Article VI, Section V, Part 3 (App 7a); Rules 2:2-1(a) (App 7a); 2:6-2 (App 8a); and 2:10-5 (App 8a). Essentially, an issue not raised below may be raised later in the appellate process by either the courts or parties; and as indicated herein (Petition, p 2) by the Appellate Panel : "amending a Notice of Appeal".

This Supreme Court shall further find , as within companion petition, that petitioner's cites , legal authorities were ignored as were cited guarantees under both the U.S. and State Constitutions; as well as binding Court Rules. Essentially again and as argued to the New Jersey Supreme Court; respondent was accorded privileged treatment, favoritism (Reply Brief , pp 3--4). The record displays retaliatory treatment towards petitioner for filing a valid suit against a sitting Judge.

Parenthetically, the $6013 sanction award, lien was taken out of petitioner's court determined sale proceeds (companion Petition pp 1--2). Essentially , even respondent violated the terms of the consent decree that he agreed to, on my behalf.

A federal claim was presented to the Appellate Division within POINT I of related brief "ENFORCING LIEN BASED UPON VOID JUDGMENT CONTRAVENES DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT". "There is no dispute that the lower court had no jurisdiction to act after Notice of Appeal was filed in this matter.....The Appellate Division earlier ruled void judgments are unenforceable, create no legal rights.....This property

deprivation , based upon a void judgment, violates due process guarantees of the FOURTEENTH AMENDMENT . Ignoring binding precendent is a further due process violation.

The affirming ruling addressed no points raised by petitioner and retorted with an indication that the original Notice of Appeal should have been amended to allow for a post-filed order(3a). No authority , precedent was cited for this position; notwithstanding, appellate rules , nowhere, make reference to any amendment. Rule 2:9-1(a), (App 8a).

Petition for Certification presented, raised federal issues ,through-out: "Several jurisdictional areas invoke the constitutional policy making mandate of this Supreme Court within suit at bar: enforce State and Federal Constitutional provisions..." "Just as with finality being a threshold issue, so does jurisdiction present a threshold issue **James v. Francesco 61 N.J. 480 (1972), 485** indicates that void judgments are not given "full faith and credit" and are subject to collateral attack" (Petition ,p 5).

"Silence as to mandate and to penalty for non-compliance is constitutionally impermissable. Although there may be a less stringent standards for law , rules in a civil setting; nonetheless, failure to direct an amendment to a Notice of Appeal to avoid a property deprivation is impermissably vague *citing*: **Leonen v. Johns-manville corp 717 F. Supp 272 (DCNJ 1989)279; State v. Lashinsky 81 N.J. 1 (1979); and Hamilton amusement Center v. Poritz 298 N.J. Super 230 (App Di8v 1987), 242.** If there is an amendment requirement, it is vague and this Court has a duty to ensure "fair play" and to do so by granting certification" (Pet , p 7). Parenthetically, those three cases cited all relied upon ,or referenced the U.S. Constitution.

"Ignoring binding, applicable precedent; bending, ignoring rules for the benefit of one side generates appearance of fundamental unfairness or an abuse of power. While petitioner does maintain that these matters are certification worthy, there should be the addit-ional impetus to grant under those standards cited by this Court in:

Rivkin v. Dover Tp. Rent Leveling Bd. 143 N.J. 352 (1996), *holding* 358" Petition , 11). **Rivkin** is New Jersey's landmark 1983 case with numerous cites, references to guarantees of the U.S. Constitution.

"These circumstances , issues may further apply to appeal under **Rule 2:2-1(a)** under **Meeker v Meeker 52 N.J. 59 (1968)** standards" (Petition , p 11). Rule 2:2-1(a) alerted the Court there were constitutional issues involved.

IV. Affirmed ruling contravenes the "Fundamental Fairness Doctrine". Resondent argues "fundamental fairness" as a denial basis; yet, would deny the same considerations to petitioner. Petitioner relied upon: the non-relaxable Ten Day Rule, case law respecting void orders, application of Rule 4:50-1 for relief from judgment, no mention of amending a Notice of Appeal to cover for negligence of opposing counsels. Essentially, respondent dosen't argue fairness, he argues for special, privileged treatment for himself; yet, presents no argument(s) in support of his position. His hypocrisy is that he argued equal treatment, to this Court, for his former client: **Matthews v City of Atlantic City 84 N.J. 153 (1980).** This action was a property deprivation lacking conformity to the Due Process Clause: **township of Montvalle v Block 69, lot 10, 74 N.J. 1 (1977), 8.** Petitioner has every right to rely upon, and to expect, compliance with procedures, established Law of the State. That reliance was misplaced and what becomes pellucidly clear is that petitioner was treated unequally": **Right to Choose v Byrne 91 N.J. 287 (1982)** *O'Hern dissenting,* "The Equal Protection Clause directs that all persons similarly circumstanced shall be treated alike". (Reply Brief , pp 3 & 4) All cases cited, *therein*; referenced or cited guarantees of the U.S. Constitution.

"The favoritism accorded repondent is apparent which commutes to "fundamental unfairness" for petitioner , contrary to : **State v. P.Z. 152 N.J. 56 (1997), 117.** "New Jersey's doctrine of fundamental fairness serves to protect citizens generally against unjust and arbitrary governmental action and specifically against governmental procedures that tend to operate arbitrarily" Justice O'Hern's holding in **Rivkin v. Dover Tp. Rent Leveling Bd. 143 N.J. 352 (1996), at 358**

squarely applies: " absent egregious misconduct that shocks the conscience in the sense of violating civilized norms of governance, or invidious discrimination on the part of a board member or board, so long as the State provides a plain, adequate and timely remedy to redress irregularities in the proceedings, a party aggrieved by the determinations of a municipal rent leveling board does not have a claim for relief under 42 U.S.C.A. 1983". (Reply Brief, p 4) Again, cases cited to the New Jersey Supreme Court referenced or relied upon U.S. Constitutional guarantees. Further, New Jersey's "fundamental fairness doctrine" is predicated upon the U.S. Constitution .

"

A grand and reversal would appear to be warranted as a post-deprivation remedy under **Rivkin**". (Reply Brief, p 5)

Neither the respondent nor the Courts ever addressed or challenged federal claims . State Courts evaded federal claims; notwithstanding, binding state law was ignored which in itself is a federal due process question. Parenthetically and as pointed out to the New Jersey Supreme Court (petition at ,p 9); the only two cases ever cited by any state court actually supported petitioner's position , rather that respondents (Appellate ruling, herein , App 4a)

REASONS FOR GRANTING THE WRIT

I. State court actions, in concert with private parties; are broadly unconstitutional , inherently wrongful.

While monetary sanctions against petitioner stem from a civil setting, this colorable, retaliatory property deprivation/theft is clearly criminal: for acting without jurisdiction and for acting without statutory authority; as defined by Title 18 U.S.C.A. 242 and its supplemental civil remedy Title 42 U.S.C.A. 1983 (App 6a). These actions are those of state courts ,up unto its supreme court. They are not those of an unknowledgeable ,good-faith public official merely misdirecting a mailed package: Crawford-El v Britton U.S. Supreme Court, Docket 96-827 (May 4, 1998) *dissenting opinion* .

The State has brazenly ignored federal constitutional guarantees of both procedural and substantive due process. Obligations voluntarily assumed since conception and still currently binding : McColloch v. Maryland 17 U.S. 314 (1819) 403-407.

(a). Nowhere, in any New Jersey appellate rule, is there a direction, or an indication that a Notice of Appeal may be amended, or should be; once filed; nor, did the Appellate Division ever cite an authority, precedent for its amendment ruling (App 3a, 4a). The New Jersey Supreme Court also remained silent, contrary to constitutional duty: New Jersey Constitution , Article VI, Section 2, Part 3 (App 7a) *Rule making authority is vested soley with that Court.*

As there is no notice , fair warning, that petitioner was required to amend his Notice of Appeal or face a property deprivation ; said State position is "void for vagueness" under Barr v. City of Columbia 378 U. S. 546 (1964) ; Giaccio v. State of Pa. 382 U.S. 399 (1966); and Leonen v Johns-Manville Corp. 717 F. Supp 272 (DCNJ 1989).

This whimsical, preposterous State position is further breached by illuminating decisions of this Court and also New Jersey Courts. As previously argued , filing a Notice of Appeal is a jurisdictional event (petition, herein 3,4), under New Jersey law. Circuitously, orders entered thereafter are void, for lack of jurisdiction. This Supreme Court addressed issues of jurisdiction within the Indiana Court system : Stump v Sparkman 435 U.S. 349(1978), where those courts are also of general jurisdiction ; just as are New Jersey Superior Courts; however and in accord, filing a Notice of Appeal [Rule 3(a)] is a jurisdictional event depriving the lower court of authority to act futher in matters on appeal: Beard v. State 176 Ind App 348, 375 NE2d 270 (1978) ruling: *"Once Notice of Appeal filed, trial court no longer had jurisdiction to grant permission to file a belated supplemental motion to correct errors".*

Under New Jersey Law, contradictory, conflicting positions judicially estop parties from asserting diametric positions. Alcman Services Corp v. Bullock 925 F. Supp 252 (DCNJ 1996), affirmed CA3. Herein , the New Jersey Courts should be judicially estopped from asserting diametric positions: Either there is a loss of jurisdiction, or there is authority to continue entering lower orders. The vagueness issue should be resolved by this Court; since the New Jersey Supreme Court evaded the same.

(b) **Similarly**, New Jersey has a non-relaxalbe Ten Day Rule that prohibits the alteration of an order ten days after filing. This is similar to F.R.C.P. 59(e); notwithstanding, New Jersey futher prohibits further separate orders for Counsel fees : Rule 4:42-9(d) (App 8a). Essentially and under case law, motions for counsel fees, sanctions should be included in the same judgment or order resolving the suit---or no later than ten days after entry of the same. If Notice of Appeal is filed prior to expiration of ten days, and if counsel still seeks an award, sanctions; then counsel is directed to move the Panel to dismiss appeal as said order is not final. *This was not the case as to matters herein. Appeal was filed long after the ten day expiration.*

Relaxing a non-relaxable Ten Day Rule so that a sitting Judge shall receive attorney fees , and also in a separate order; while no other parties, litigants are permitted the same solicitude, clearly deprives petitioner of equal treatment and of the corresponding right to protect his property from colorable deprivation. . Both are fundamentally guaranteed by the Fourteenth Amendment.

(c) **N.J.S.A. 2A:15-59.1** was modeled after F.R.C.P. 11 and has similar goals. Courts may impose sanctions upon litigants who file, continue a complaint....(7a). The statute is silent as to joinder or non-joinder. The sanctions imposed upon petitioner are clearly not within the purview of 2A:15-59.1 , which soley speaks to commencing or continuing a complaint; **notwithstanding**, the Entire Controversy Doctrine ,Rule 4:30A (App 7a), in itself is an admission of the existence of a valid cause of action. The harsh rule is only invoked for failing to join with another valid cause of action; hence, a common sense understanding should be that the cause of action is not frivolous by the ruling of the court imposing the Entire Controversy Dismissal; hence again, an admission of validity , denying 2A:15-59.1 sanctions.

In essence and obviously, the retaliatory nature of sanctions imposed is quite evident. The sanctions, themselves, were baseless; and as a reminder, these actions are not soley those on errant lower court; not-withstanding , a concurrent review of companion petition (*herein*) strongly indicates the prevalence of aberrant conditions.

II. The issues, questions are of significant public importance.

(a). Issues , herein, are not unique. Last year, over 7600 appeals were filed, reflecting annual increases. Litigants have every right to rely upon the uniform application of non-relaxable rules. Arbitrary application, tailored to circumstances, has been given the imprimatur of this State's highest court. Each and every litigant, who contemplates or actually files an appeal, is at risk of losing rights and property at the whim of lower courts, with the blessing of those higher. Prejudical rule application contravenes the Fourteenth Amendment. Silence , absent notice of prejudice, to amending a Notice of Appeal ; and arbitrary relaxation are "fundamentally unfair": Lassiter v. Department of Soc. Serv. of Durham Cty 452 U.S. 18 (1981) 24--27; and also violate due process guarantees.

F.R.A.P 4 (a) and F.R.C.P. 59(e) are comparable. Amendments to Notice of Appeals are not indicated and 59(e) may not be relaxed. Applications are uniform with justifiable reliance; comporting with due process guarantees, on the federal level.

(b). True "States have the major responsibility for maintenance of law and order within their borders,": Darr v. Buford , Warden 339 U.S. 200 (1949) 217; yet, under : Huffman v Pursue 420 U.S. 592 (1975) and Judice v Vail 430 U.S. 327 (1977) this Court may wish to timely express the harsh nature of New Jersey's Rule 4:30A, on behalf of all state litigants so as to be more in line with federal Rule 19.

Dismissal of an entire suit is a severe sanction for not complying with rules: Chambers v. Nasco Inc. 501 U.S. 32 (1991) 45. The New Jersey Supreme Court is currently weighing further action on Rule 4:30A . The original basis for dismissing petitioner's malpractice suit was overuled last year: Olds v. Donnelly 150 N.J. 424 (1997), indicating that legal malpractice actions no longer require joinder with an original suit. Federal Rule 19 is cited within Olds : "Neither the

federal courts nor any other state court---with the exception of Kansas---- has adopted a preclusive rule similar to our entire controversy doctrine as a means of enforcing mandatory joinder" 452.

The concurring opinion of Justice Stein reveals the harshness of mandatory joinder wihtin Olds 467: "I applaud the Court's attempt to modify the adverse effects of its heretofore rigid application of the party-joinder aspect. But the Court's own application of the doctrine has not been nearly as flexible as its rhetoric implies..... The evidence of the doctrine's application to date points overwhelmingly to the conclusion that, preclusion of the second suit is an unjust, inefficient, and counter-productive mechanism for enforcing party joinder". Justice Stein argues for full overuling of the Entire Controversy Doctrine as there is now a practice committee reviewing the same.

(c). Regardless of this Court's interest in the prior argument and until overruled, the appilication of sanctions to a Rule 4:30A dismissal is clearly unconstitutional. 2A:15-59.1 soley applies to commencing or filing a complaint——not to joinder or non-joinder (App 7a). New Jersey court's are not free to legislate by including a joinder requirement . This Supreme Court should speak on behalf of all New Jersey citizens . The statute does have beneficial , public goals; yet , may not be used as a vindictive, unconstitutional sword.

(d). Petitioner argued the recent Olds reversal to the New Jersey Supreme Court (Pet., p 8) as further grounds for a grant. Olds was given limited retroactiveity to those cases currently pending : Olds pp 449-450;yet, petitioner correctly pointed out the application of this Olds aspect as grant/reversal grounds. Although personal to petitioner, there may be other litigants who have been denied reversal benefits. By the New Jersey Supreme Courts own admissions, their own actions are not in accord with their own decisions. "Contrary to the Court's rhetoric, in practice preclusion proves to be the remedy of *first*—not last—resort, and innocnet litigants will continue to be denied their day in court, as long as trial courts have the discretion to dismiss suits because of non-joinder of parties in prior litigation" 472. "Our job now is to correct it so that the judiciary, the bar , and our state's litgants can return to the business of resolving cases on their merits" 473.

Applicability, herein, is that the New Jersey Supreme Court still refuses to apply the Olds reversal to pending cases , contrary to their own ruling. This Court should speak and offer the benefits of the Olds reversal to all pending suits.

(e). The workload of this Court is of significant public concern . Competition , limited resources require concisely displayed positions. This Court should be assured that the record below is very brief and that filings below presented petitioner's position accurately and concisely. Essentially, a grant would not consume limited resources as would be required if a lengthy trial, voluminous record were presented for review. It may very well be that this Court may be able to summarily address the issues , to a correct dispostion.

This petition for certiorari should be granted.

Very respectfully submitted

Roy F. Sutton
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609 652 8313
Petitioner

ROY F SUTTON	: SUPERIOR COURT OF NEW JERSEY
PLAINTIFF,	: GLOUCESTER COURNTY
	: LAW DIVISION
V.	: GLO-L-672-95
	:
GEORGE L SELTZER,	: CIVIL ACTION
ESQ., ET AL,	: ORDER VACATING VOID JUDG- -
DEFENDANTS.	: MENT ALLOWING FEES AND
	: SANCTIONS

The Court, after reviewing moving papers, filed in the above captioned matter, and for good cause shown and none to the contrary, Orders and Adjudges this 7 Day of Feb. 1997 that the previous order of October 30, 1996 granting fees and costs to defendants is hereby sustained.

/s/ Hon Donald G. Smith, Jr.
Superior Court of New Jersey
Gloucester County/Law Div.

ROY F SUTTON,	: SUPERIOR COURT OF NEW JERSEY
PLAINTIFF,	: GLOUCESTER COUNTY
	: LAW DIVISION
V.	: GLO-L-672-95
	:
GEORGE L SELTZER,	: CIVIL ACTION
ESQ., ET AL,	: ORDER VACATING JUDGMENT
DEFENDANTS.	: AFTER RECONSIDERATION

The Court , after reviewing moving papers, filed in the above captioned matter, and for good cause shown and none to the contrary, Orders and Adjudges this 7 day of March 1997 that the previous order of October 30, 1996 granting fees and costs to defendants is hereby affirmed.

/s/Hon Donald G. Smith, Jr.
Superior Court of New Jersey
Gloucester County/Law Div.

ROY F SUTTON	: SUPERIOR COURT OF NEW JERSEY
PLNTF-APPLNT	: APPELLATE DIVISION
V.	: A-4760-96T1
GEORGE L SELTZER	:
DEFNDT-RSPNDT	:
AND	:
ALTEN,VALENTINE	:
& SELTZER.	:
DEFNDTS.	:

Submitted: December 17, 1997-Decided Jan 13, 1998
Before Judges Brochin and Braithwaite
On appeal from the Superior Court of New Jersey, Law Division, Glou-cester County
Roy F. Sutton, Appellant pro se
George L. Seltzer, respondent pro se

PER CURIAM

This is the second appeal by plaintiff in this legal malpractice action. plaintiff sued defendant George L. Seltzer asserting that Seltzer committed legal malpractice when he represented plaintiff with respect to his claims against the estate of his deceased father. Summary judgment was granted to Seltzer dismissing plaintiff's complaint because of his failure to comply with the entire controversy doctrine. See R. 4:30A.

On September 1, 1995, plaintiff appealed the summary judgment granted to Seltzer. Thereafter, in the Law Division, Seltzer moved for an award of counsel fees pursuant to the frivolous litigation statute N.J.S.A 2A:15-59.1. Plaintiff opposed the motion on the basis that the Law Division lacked jurisdiction to award fees because of the filing of the appeal. The Law Division judge awarded counsel fees on October 30, 1995. Plaintiff did not amend or move to amend his notice of appeal to include the order awarding fees to Seltzer.

We affirmed the summary judgment granted to Seltzer. See Sutton v Seltzer, A-458-96T2 (App Div June 14, 1996). On June 21, 1996, the award of counsel fees to Seltzer was reduced to judgment.

On January 8, 1997, approximately fifteen months after the entry of the order for fees, and almost seven months after the decision on appeal, plaintiff moved, pursuant to Rule 4:50-1, to vacate the judgment awarding counsel fees to Seltzer. His application was denied and he now appeals contending:

POINT I : ENFORCING LIEN BASED UPON VOID JUDGMENT CONTRAVENES DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT

POINT II : THE LOWER COURT ERRED BY IGNORING THE BINDING HOLDINGS OF APPLICABLE CASE LAW.

POINT III : THE LOWER COURT ERRED BY IGNORING STATUTORY IMPERATIVE.

POINT IV : 2A:15-59.1 SANCTIONS ARE NOT APPLICABLE TO SUIT AT BAR FOR AN ENTIRE CONTROVERSY DISMISSAL.

We have carefully reviewed the record and, in light of applicable law, conclude that plaintiff's contentions are clearly without merit.; R. 2:11-3(e)(1). Plaintiff did not appeal the order for counsel fees when he clearly could have done so. The time for appeal has expired, and, although the award of counsel's fees to Seltzer may have been error, no ground for relief is demonstrated under Rule 4:50-1. See Hodgson v Applegate, 31 N.J. 29, 37 (1959); Hendricks v. A J Ross Co. , 232 N.J. Super 243, 248-49 (App Div 1989).

Affirmed.

ROY F SUTTON	: SUPREME COURT OF NEW JERSEY
PLNTF-PET,	: C-874
V.	: SEPTEMBER TERM 1997
GEORGE L SELTZER	: 45,454
ESQ., ET AL.	:
DEF-RSPNDTS.	: ON PETITION FOR CERTIFICATION

to the Appellate Division, Superior Court.

A petition for certification of the judgment in A-4760-96 having been submitted to this Court, and the Court having considered the same:

It is ordered that the petition for certification is denied, with costs.

WITNESS: The Honorable Deborah T. Poritz, Chief Justice, at Trenton, this 24th day of March, 1998.

/s/ Stephen W. Townsend
Clerk of the Supreme Court

STATUTORY PROVISIONS INVOLVED

U.S. Constitution

Amendment XIV, Section 1: All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the Laws.

United States Code

18 U.S.C.A. 242 (pertinent part), Whosoever, under color of any Law , Statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, possession or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or Laws of the United States,..... shall be fined under this title or imprisoned not more than one year, or both...

42 U.S.C.A. 1983: Every person who, under color of any statute, ordinance, regulation, custom or usuage of any State or Territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

New Jersey Constitution

Article VI, Section II, Part 2; Tthe Supreme Court shall exercise appellate jurisdiction in the last resort in all causes provided in this Constitution.

Article VI, Section 2, Part 3; The Supreme Court shall make rules governing the administration of all courts in the State and, subject to the law, the practice and procedure in all such courts. The Supreme Court shall hve jurisdiction over the admission to the practice of law and the discipline of persons admitted.

Article VI, Section III, Part 2; The Superior Court shall have original general jurisdiction throughout the State in all causes.

Article VI, Section V, Part 3; The Supreme Court and the Appellate Division of the Supreior Court may exercise such original jurisdiction as may be necessary to the complete determination of any cause on review.

New Jersey Statutes

2A:15-59.1 : Frivolous complaint, counterclaim, cross-claim or defense of nonprevailing party; award of costs and attorney fees to prevailing party.
(petinent parts)
b. In order to find that a complaint .....of the nonprevailing party was fivolous, the judge shall find on the basis of the pleadings, discovery, or the evidence presented that either:
(1). The complaint.....was commenced, used or continued in bad faith solely for the purpose of harassment, delay or malicious injury,
or
(2). The nonprevailing party knew, or should have known, that the complaint.....was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.
c. A party or public entity seekin an award under this section shall make application to the court which heard the matter.....

New Jersey Court Rules

2:2-1. Appeals to the Supreme Court from final Judgments.
(a) As of Right, Appeals may be taken to the Supreme Court from final judgments as of right: (1) in cases determined by the Appellate Division involving a substantial question arising under the Constitution of the United States or this State.

2:6-2. Contents of Appellant's Brief, Comments:"nevertheless an issue not raised below may be considered by the court if it meets the plain error standard or is otherwise of special significance to the litigant, to the public or to the achieving of substantial justice".

2:9-1(a) Control by Appellate Court of Proceedings Pending Appeal or Certification.
(a) Control prior to the Appellate Disposition. Except as otherwise provided.....The supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed. The trial court, however, shall have continuing jurisdiction to enforce judgments and orders pursuant to R. 1:10 and as otherwise provided. The appellate court may at any time entertaina motion for directions to the court or courts or agencies below or to modify or vacate any order made by such courts or agencies or by any judge below.
Comments: "Except to the extent of enforcement and exept as otherwise expressly provided for by rule, the ordinary effect of the filing of the notice of appeal is to deprive the court below of jurisdiction to act further in the matter unless directed to do so by the appellate court".

2:10-5 Original Jurisdiction; The appellate court may exercise such original jurisdiction as is necessary to the complete determination of any matter on review.

4:30A. Entire Controversy Doctrine: Non-joinder of claims or parties required to be joined by the entire controversy doctrine shall result in the preclusion of the omitted claims to the extent required by the entire controversy doctrine, except as otherwise provided.....

4:42-9 Counsel Fees. (d) Prohibiting Separate Orders for the Allowance of Fees. An allowance of fees made on the determination of a matter shall be included in the judgment or order stating the determination.

4:49-2. Motion to Alter or Amend a Judgment or Order.

Except as otherwise provided by R. 1:13-1(clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 10 days after entry of the judgment or order. .....

4:50-1 Relief from Judgment or Order

On motion with briefs, and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment or order for the following reasons: (d). the judgment or order is void. (e). a prior judgment or order upon which it is based has been reversed or otherwise vacated.

Indiana, Rules of Appellate Procedure

Rule 3. (a) *Submission and jurisdiction.* Every appeal shall be deemed submitted and the (appellate) tribunal deemed to have acquired general jurisdiction on the date the record of the proceedings is filed with the clerk of the Supreme Court and Court of Appeals. Prior thereto, the appellate tribvunal may, whenever necessary, exercise limited jurisdiction in aid of its appellate jurisdiction.....